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IN THE

CHARLES ELLIOTT CROPLEY  
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# Supreme Court of the United States

October Term, 1943.

No. 1098-107

KEASBEY & MATTISON COMPANY,

*Petitioner,*

*against*

WALTER J. ROTHENSIES, Collector of Internal Revenue,

*Respondent.*

PETITION FOR A WRIT OF HABEAS CORPUS TO THE  
CIRCUIT COURT OF APPEALS FOR THE THIRD  
CIRCUIT AND BRIEF IN SUPPORT.

CHARLES MYERS,

KENNETH W. GEMMILL,

*Attorneys for Petitioner.*

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IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1943.

No. .

KEASBEY & MATTISON COMPANY,  
*Petitioner,*  
*against*

WALTER J. ROTHENSIES, COLLECTOR OF INTERNAL  
REVENUE,  
*Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS FOR THE THIRD  
CIRCUIT.

*To the Honorable the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

Keasbey & Mattison Company petitions for a writ of certiorari to review a decision of the Circuit Court of Appeals for the Third Circuit rendered on March 26, 1943, which affirmed the decision of the United States District Court for the Eastern District of Pennsylvania made on February 2, 1942.

**THE NATURE OF THE PROCEEDING.**

The Petitioner brought this action to recover Federal income taxes paid for its fiscal year ending March 31, 1937, on the ground that taxes paid by the Petitioner to the Province of Quebec under the Quebec Mining Act were income



taxes which the Petitioner was entitled to credit against income taxes due the United States under Section 131 of the Revenue Act of 1936. The District court for the Eastern District of Pennsylvania held that taxes paid under the Quebec Mining Act were not income taxes and that the Petitioner was not entitled to credit such taxes against income taxes due the United States. The Petitioner appealed to the Circuit Court of Appeals for the Third Circuit which affirmed the decision of the District Court. It is this decision of the Circuit Court of Appeals, affirming the District Court for the Eastern District of Pennsylvania, which the Petitioner seeks to review in this Court.

### **THE QUESTION PRESENTED.**

Is the tax imposed on "annual profits" of mining companies by the Province of Quebec a tax on income under criteria established by the laws of the United States so as to be an allowable credit against income taxes due the United States?

### **SUMMARY STATEMENT OF MATTER INVOLVED.**

The taxpayer, a corporation of the Commonwealth of Pennsylvania, owned and operated asbestos mines in the Province of Quebec and, as required by the Quebec Mining Act (15 Geo. V, Chap. 37), paid taxes to the Province of Quebec by reason of its operations in that Province. The Quebec Mining Act imposes a tax upon the Company's annual profits which are defined as "the gross value of the year's output sold, utilized or shipped" less the deductions specified in the Act. On its Federal income tax return for the fiscal year ending March 31, 1937, the Petitioner claimed as a credit against the taxes due the United States, the

amount of taxes so paid the Province of Quebec, \$10,072.26, as income taxes within Section 131 of the Revenue Act of 1936. The Commissioner of Internal Revenue disallowed that credit, but he allowed the amount of tax so paid the Province of Quebec as a deduction in computing the Petitioner's net income for that fiscal year. The Commissioner assessed an additional tax of \$7,085.28 against the Petitioner, which was paid, and this action was instituted to recover that amount. The United States District Court for the Eastern District of Pennsylvania held that the Quebec Mining Tax was not an income tax and this decision was affirmed by the Circuit Court of Appeals for the Third Circuit.

**REASONS WHY THE WRIT OF CERTIORARI SHOULD  
ISSUE.**

1. The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with the applicable decisions of this Court.

In deciding whether the Quebec Mining Tax was an income tax, the Circuit Court of Appeals stated that the term "income tax" as used in Section 131 of the Revenue Act of 1936 must be defined in accordance with the concept of income taxes as used in the United States, following the decision of this Court in *Biddle v. Commissioner of Internal Revenue*, 302 U. S. 573. However, in deciding what criteria made a tax an income tax in the United States, the Court used the definition of income in *Eisner v. Macomber*, 252 U. S. 189, stating:

"The defined concept of income has been uniformly restricted to a gain realized or a profit derived from capital, labor, or both."

That concept of income has been rejected by this Court in *Helvering v. Bruun*, 309 U. S. 461, *Helvering v. Horst*, 311 U. S. 112, and particularly in *Helvering v. Griffiths*, decided on March 1, 1943, No. 467, October Term, 1942.

The decision of the Circuit Court of Appeals adopts a very narrow and limited view of the application of Section 131 of the Revenue Act of 1936, whereas this Court has stated that a similar section in the Revenue Act of 1921 should be broadly interpreted to permit corporations incorporated in this country to carry on their activities abroad without incorporating subsidiaries. *Burnet v. Chicago Portrait Co.*, 285 U. S. 1.

2. The Circuit Court of Appeals has decided an important question of Federal law which has not been but should be settled by this Court.

This Court, in *Biddle v. Commissioner of Internal Revenue*, 302 U. S. 573, held that a foreign tax which may be used as a credit against income taxes due the United States must be a tax which meets the criteria of income taxes in the United States. However, no case has been presented in which it was necessary to decide what criteria are to be applied and how exactly a foreign tax must conform to the details of the United States income tax. Must the foreign tax follow the Internal Revenue Code exactly as to definition of gross income and of net income and as to credits and other details, or need there be only substantial conformity? As will be seen in the brief in support of this petition, the Bureau of Internal Revenue has issued rulings on taxes of many foreign countries, and it is important that this Court decide what parts of the United States income tax must be followed by the foreign tax in order that it may be taken as a credit against taxes due the United States.

The decision of this question is less important for the year 1942 and subsequent years, because Congress in Section 158 of the Revenue Act of 1942 broadened the scope of taxes which may be taken as a credit to include not only income taxes but also "a tax paid in lieu of a tax upon income." However, by that enactment Congress did not settle the problem for all income tax years prior to 1942, and even for the year 1942 and subsequent years the question remains as to whether a tax of a foreign country is a tax on income.

**PRAYER.**

For the foregoing reasons your Petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the Third Circuit commanding said Court to certify and send to this Court on a date to be determined, a full and complete transcript of the record of all of the proceedings of such Circuit Court of Appeals had in this case to the end that this cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed; and that the Petitioner be granted such other and further relief as may be proper.

KEASBEY & MATTISON COMPANY,

By CHARLES MYERS,

KENNETH W. GEMMILL,

*Its Attorneys.*

Dated, Philadelphia, Pennsylvania,

June 15, 1943.